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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,305	08/04/2003	Fred Winter	028987.52387US	3419
23911	7590	06/15/2004	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			ENGLE, PATRICIA LYNN	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,305

Applicant(s)

WINTER ET AL.

Examiner

Patricia L Engle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 18, 23, 25, 27-33 and 35-37 is/are rejected.
- 7) ☒ Claim(s) 10-17, 19-22, 24, 26, 34 and 38-40 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/7/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The citizenship of Roberto Oggianu is incorrect (the Application Data Sheet indicates that he is a citizen of Italy, but the Declaration indicates he is a citizen of Germany).

Drawings

2. The drawings are objected to because lines VI-VI, VII-VII, VIII-VIII and IX-IX are missing (should line B-B in Fig. 10 be line VIII-VIII?). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 1-34 are objected to because of the following informalities:
 - a. In claim 1, line 10, "the center tunnel" should be --a center tunnel--;
 - b. In claim 1, line 14, a comma should be inserted between "dashboard" and "the A-columns";
 - c. In claim 20, line 3, "(" should be deleted;
 - d. In claims 27, 28 and 38, "on the one hand" should be --on one end--;
 - e. In claims 27, 28 and 38, "on the other end" should be --on another end-- or --on the other end--;

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation that the tubular frame is connected at least with the dashboard, A-columns and the front walls, and the claim also recites that the support beam (tubular frame) is provided in an area by means of which the front

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longitudinal beams are power transmitters to the A-columns, the front walls, the dashboard and the center tunnel which is the narrower statement of the range/limitation.

How is the beam a power transmitter for the center tunnel but not connected to the center tunnel?

7. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “building height” in claim 9 is not clearly defined, while the accepted meaning is “the height of a building.” The term is indefinite because the specification does not clearly redefine the term.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-9, 18, 23, 25, 27-33 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srock et al. (US Patent 5,562,329) in view of Clausen et al. (US Patent 5,839,776).

Regarding claims 1 and 35, Srock et al. disclose a configuration of a passenger car comprising: a dashboard (3) installed between a front (11) of the car and the passenger compartment (2); at least two front longitudinal beams (5) that are connected to the dashboard (3) at a distance from each other; lateral exterior front walls (4), a floor (17) and upright A-columns (28), wherein a support beam structure (38) is provided in an area of the dashboard (3) by means of which the front longitudinal beams (5) are connected as power transmitters to the upright A-columns (28), the front walls (4), the dashboard (3) and the center tunnel (25,39), wherein the beam structure (38) is formed by a rigid frame (40) which is installed at the passenger compartment facing side (Fig. 3) of the dashboard (3), said frame being connected at least with the dashboard (3), the A-columns (28) and the front walls (4, Fig. 3). **Regarding claims 2 and 36**, Srock et al. disclose that the frame comprises: a horizontally-aligned cross beam (40) formed in one or several parts; a central support (39) supporting the cross beam (40); and lateral support beams (41) supporting the cross beam (40). **Regarding claims 5 and 37**, Srock et al. disclose that the cross beam (40) comprises a transverse running center part (40) and inclined side parts (41,42). **Regarding claim 27**, Srock et al. disclose that the central support (39) is, on the one hand, firmly connected with the cross beam (40) and, on the other hand, with a placed-on tunnel reinforcement (45). **Regarding claims 29 and 30**, Srock et al. disclose that

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the front longitudinal beams (5) are connected as power transmitters with each other via a front hollow-beam-type cross member (11) and another cross member (30) which is connected to a bulkhead.

Srock et al. do not disclose that the frame is tubular.

Clausen et al. disclose a configuration of a passenger car comprising a support beam structure (4) is tubular. **Regarding claim 6**, Clausen et al. disclose that the transverse section and the inclined side parts are one piece.

Srock et al. and Clausen et al. are analogous art because they are from the same field of endeavor, i.e., front body structures with cross car support beam structures.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to make the support beam a tubular member.

The motivation would have been to have a beam structure which provides more reinforcement for the dashboard member.

Therefore, it would have been obvious to combine Srock et al. with Clausen et al. to obtain the invention as specified in claims 1, 2, 5, 6, 27, 29, 30, 35, 36 and 37.

Regarding claims 3 and 4, Srock et al. as modified do not specifically disclose that the frame (38,40) is made from a high rigidity material. However, Srock et al. disclose that the frame (38,40) does act as a power transmitter in the case of an accident (column 4, lines 14-16); therefore it would have been inherent that the material is a high rigidity material.

Regarding claim 7, Srock et al. as modified do not specifically disclose that the transverse section and the inclined side parts are separate parts. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the transverse section and the

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inclined side parts separate sections, since it has been held that constructing formerly integral structure in various elements only involves routine skill in the art.

Regarding claim 8, Srock et al. as modified disclose in Fig. 3 that the side parts and the transverse section exhibit different dimensions.

Regarding claim 9, Srock et al. as modified disclose in Fig. 5 that the side parts exhibit a smaller cross section (each section of the side part has a smaller cross section than the cross section of 40 in Fig. 4).

Regarding claim 18, Srock et al. disclose that at the dashboard (3), a transverse running step- or recess-shaped seat (annotated Fig. 4 attached hereto) is provided, into which seat the cross beam (40) reaches at least in sections (the upper section of the cross beam). It would have been obvious to one of ordinary skill in the art at the time of the invention to place a tubular member in the recess of the dashboard of Srock et al. The motivation would have been to provide reinforcement for the dashboard and to make the placement of the reinforcement easy.

Regarding claim 23, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the lateral supports (41,42) have an oval cross section, since a change in shape is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 25, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the support beam (40) have an polygonal cross section, since a change in shape is generally recognized as being within the level of ordinary skill in the art and the rectangle taught by Clausen et al. is a polygon.

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Regarding claim 28, Srock et al. as modified disclose that the central support (39) is, on the one hand, firmly connected with the cross beam (40) and, on the other hand, with a placed-on tunnel reinforcement (45).

Regarding claims 31-33, MPEP 2113 Product-by-Process Claims states that "If the product in the product-by-process claim is that same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." The configuration is anticipated by Srock et al. as modified by Clausen et al. The process by which the configuration is made is not a patentable distinction.

Allowable Subject Matter

11. Claims 10-17, 19-22, 24, 26, 34 and 38-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777.

The examiner can normally be reached on Monday - Friday from 8:00 to 4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia L Engle
Examiner
Art Unit 3612

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June 4, 2004